

REMARKS

Applicant thanks Examiner Leavitt for taking the time on September 23, 2010 to hold an informal telephonic interview with the undersigned. The following Reply reflects that discussion.

In response to the Office Action dated June 28, 2010, Applicant has amended claims 9 and 10, to more clearly recite particular aspects of the presently claimed invention. Claims 15-41 have been canceled and no new claims have been added. Support for these amendments can be found throughout the as-filed specification and original claims. Thus, this amendment does not constitute new matter. It should also be noted that the above amendments are not to be construed as acquiescence with regard to the Examiner's rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Claims 1, 3, 6, 8, 11, and 12 are currently pending and under examination. Reconsideration of the present application in light of the above amendments and the following remarks is respectfully requested.

Applicant respectfully requests that once the currently examined claims are allowed, claims reciting species which were not elected for preliminary examination (e.g., claims 4, 5, 9, and 10) be rejoined and examined.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 15-17, 19-21, 23-26, and 28 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Paralkar *et al.* (U.S. Patent Application Publication No. 2004/0176423; hereinafter referred to as "Paralkar") in view of Parish *et al.* (1995) *Lipids*, 247-251, hereinafter referred to as "Parish", and further in view of Wang *et al.* (2000) *Clinical Orthopedics and Related Research* 370, 295-310, hereinafter referred to as "Wang". Applicant respectfully notes that claims 15-17, 19-21, 23-26, and 28 have been canceled; thus, this basis of rejection is moot with regard to these claims.

Provisional Rejections, Obviousness Type Double Patenting

Applicant respectfully notes that claims 15-17, 19-21, 23-26, and 28 have been canceled; thus, the following bases of rejection are moot with regard to these claims.

Claims 1, 3, 6, 8, 11, 12, 15-17, 19-21, 23-26, and 28 stand rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-3,

5-9, 11-15, 17-20, 22-25, and 27-30 of copending U.S. Patent Application No. 10/569,994, in view of Paralkar *et al.* (U.S. Patent Application Publication No. 2004/0176423; hereinafter referred to as “Paralkar”) for reasons of record set forth in the Office Action of June 11, 2008.

Claims 1, 3, 6, 8, 11, 12, 15-17, 19-21, 23-26, and 28 stand rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-11 of copending U.S. Patent Application No. 11/918,089, and over claims 1-9 and 15 of copending U.S. Patent Application No. 11/991,322 for reasons of record set forth in the Office Action of June 11, 2008.

Applicant respectfully traverses these bases for rejection.

Applicant respectfully requests that the two provisional double-patenting rejections be held in abeyance until the allowance of claims in the instant application.

M.P.E.P. § 804(I)(B)(1) states that “[i]f a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Accordingly, upon allowance of the claims, Applicant respectfully requests withdrawal of these bases for rejection.

Claim Rejections Under 35 U.S.C. § 112, second paragraph

Claims 15-17, 19-21, 23-26, and 28 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully notes that claims 15-17, 19-21, 23-26, and 28 have been canceled; thus, the following bases of rejection are moot with regard to these claims.

Claim Rejections Under 35 U.S.C. § 112, first paragraph, new matter

Claims 15-17, 19-21, 23-26, and 28 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner alleges that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the

inventor, at the time the application was filed, had possession of the claimed invention. Applicant respectfully notes that claims 15-17, 19-21, 23-26, and 28 have been canceled; thus, this basis of rejection is moot with regard to these claims.


In view of the preceding arguments, applicant believed that the present claims are in condition for allowance, which action is respectfully requested.

Should any additional fee be deemed due, please charge such fee to our Deposit Account No. 22-0261, reference our docket number 58086-241892, and notify the undersigned accordingly.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Respectfully submitted,

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